

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: JUL 22 1994

Person to Contact:

Contact Telephone Number:

Refer Reply to:

Employer Identification
Number:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] in the State of [REDACTED].

The specific and primary purpose for which this corporation is formed is to provide help and assistance to designated children's charities which shall be determined by the directors. To serve this goal, the corporation may, market, solicit, and sell brand name sweats, athletic apparel, and other products and services via mail order, or in any other manner permitted by law and may solicit and engage in all promotional and fundraising activities on behalf of the designated charities.

The evidence submitted with your application 1023 indicates that [REDACTED] Inc was created to provide funds to three designated children charities in the [REDACTED] area. Funds provided by [REDACTED] would be raised by selling, via mail order catalog, comfortable clothing such as sweat pants, T-shirts, shorts and other articles. Items would be purchased at wholesale (distributor pricing) and sold at a price lower than retail stores.

[REDACTED] selected those articles of clothing for sale because they have the broadest target audience. Mail order sales was selected because of the convenience and low overhead.

In a memo dated [REDACTED], the organization stated that it would sell sweat clothes through [REDACTED] catalogs and not through the charities catalogs. It also stated that there would be no logos other than what is purchased from the clothing manufacturer, i.e. [REDACTED]. The idea is to sell what customers can purchase in the department stores, through the organization's catalog at reduced rate, not with the organization's and charities' logos.

In addition, you stated that mail order was selected as the method for marketing in order to offer the consumer an opportunity to purchase the same items available in department stores at a lower price. [REDACTED] is not in competition with other catalog companies but is in competition with department stores.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

Section 502 of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for-profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Section 1.502-1(a) of the Income Tax Regulations provides in effect that for the purposes of section 502 as applied to organizations described in section 501(c)(3) in determining the primary purpose for which an organization is operated, consideration is to be given to the relative size and extent of the trade or business activities of the organization and to whether it has any significant charitable activities other than the required payment of all of its profit over to one or more other charitable organizations that are exempt under section 501(c)(3).

If its principal income producing activity is the conduct of trade or business and it has no significant charitable activity other than required payment of all of its profits to one or more charitable organizations exempt under section 501(c)(3), it is deemed to be operated for the primary purpose of carrying on a trade or business for profit within the meaning of section 502.

Revenue Ruling 73-164 1971-1 C.B. 223, denied exemption to a commercial printing business since its only basis for qualifying was that its profits were required to be paid to a church. Since the organization had no other significant charitable activity and its income producing activity is the conduct of a trade or business, it was held that exemption under 501(c)(3) was precluded by reason of section 502.

Similar to the organization described in Revenue Ruling 73-164, your organization's only basis for qualifying for exemption under section 501(c)(3) is to provide funds to three designated childrens charities. These funds derived from income producing activity of selling a line of clothes via mail order catalog which is the conduct of a trade or business.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

We have also determined that you fail to qualify for exempt status under any other subsection of IRC 501(c).

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely, yours

District Director

Enclosure: Publication 892